

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DOMINIQUE ZAFIR CASEY,

Plaintiff,

v.

HADDAD, et al.,

Defendants.

Case No. 1:21-cv-00855-KES-SKO (PC)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
UNOPPOSED MOTION TO COMPEL AND  
REQUEST FOR SANCTIONS**

(Doc. 64)

Plaintiff Dominique Zafir Casey is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's constitutional claims against Defendants Castro, Fernandez, and Haddad.

**I. INTRODUCTION**

The Court issued its Discovery and Scheduling Order on September 18, 2024. (Doc. 60.) On February 14, 2025, the Court granted Defendants' motion to modify the discovery order. (Doc. 63.) Specifically, the deadline for completing discovery, including the filing of any motion to compel, was extended to March 20, 2025, and the dispositive motion filing deadline was extended to May 21, 2025. (*Id.* at 2.)

On March 20, 2025, Defendants filed their Motion to Compel and Request for Sanctions. (Doc. 64.) Plaintiff did not file an opposition to the motion.

## II. DISCUSSION

### A. Defendants' Briefing

Defendants seek an order compelling Plaintiff to sit for a second deposition and to produce complete responses to numbers 3, 5, and 6, of their request for production of documents. (Doc. 64 at 1, 12-14, 16-17.) Defendants also seek sanctions totaling \$3,023.45 for costs and attorney's fees associated with Plaintiff's first deposition and preparation of the instant motion. (*Id.* at 1, 14-15.)

### B. General Principles Concerning Discovery

"District courts have broad discretion to manage discovery and to control the course of litigation under Federal Rule of Civil Procedure 16." *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012) (quotation marks & citation omitted). The purpose of discovery is to "remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute." *United States v. Chapman Univ.*, 245 F.R.D. 646, 648 (C.D. Cal. 2007) (quotation & citation omitted). "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense ...." Fed. R. Civ. P. 26(b)(1).

### C. Plaintiff Must Sit for a Second Deposition

The Discovery and Scheduling Order provides as follows: "Pursuant to Federal Rule of Civil Procedure 30(a)(2)(B), Defendants may depose Plaintiff and any other witness confined in a prison, by video or in person, provided that, at least 14 days before such a deposition, Defendants serve all parties with the notice required by Federal Rule of Civil Procedure 30(b)(1)." (Doc. 60 at 2, n. omitted.) Further, that order provides that "the failure of Plaintiff to attend, be sworn, and answer appropriate questions may result in sanctions, including terminating sanctions as provided in Federal Rule of Civil Procedure 37." (*Id.*)

Rule 30 of the Federal Rules of Civil Procedure provides that a "court may impose an appropriate sanction—including the reasonable expenses and attorney's fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent." Fed. R. Civ. P. 30(d)(2).

Defendants properly noticed Plaintiff's deposition for February 27, 2025. However, after

1 being placed under oath, Plaintiff refused to answer questions and claimed ignorance regarding  
2 the deposition process. Defense counsel states that before the deposition on February 27, 2005,  
3 Plaintiff had been deposed in another action pending in this Court: *Casey v. Brown*, No. 1:23-cv-  
4 01068-JLT-SAB. During his January 2025 deposition in the other action, Plaintiff acknowledged  
5 and understood the purpose and format of a deposition and his responsibilities to testify honestly  
6 and competently. Defendants contend that Plaintiff's claimed ignorance, lies about experience  
7 testifying under oath, and refusal to proceed with the February 27 deposition in this case warrant  
8 an order from the Court compelling Plaintiff to testify at a second deposition.

9 A review of the transcript from the February 27, 2025,<sup>1</sup> deposition reveals that Plaintiff  
10 was uncooperative and alleged he was unfamiliar with the deposition process. (*See, e.g.*,  
11 Deposition of Casey, at 5-8, 10-12.) Plaintiff claimed that the deposition process as explained by  
12 defense counsel was unfair and that a judge should be present at the deposition. (*Id.* at 10-15.)<sup>2</sup>  
13 Plaintiff then stated he did not wish to proceed with the deposition and defense counsel ended the  
14 proceedings following a discussion regarding outstanding discovery responses. (*Id.* at 16-18, 32-  
15 33.)

16 Plaintiff is obligated to follow applicable federal and local rules. As Plaintiff was advised  
17 nearly four years ago in the Court's First Informational Order in Prisoner/Civil Detainee Civil  
18 Rights Case, "the parties must comply with this Order, the Federal Rules of Civil Procedure ...,  
19 and the Local Rules of the United States District Court, Eastern District of California ...." (Doc. 3  
20 at 1.) Plaintiff was also advised that "[o]nce the Court allows discovery to begin, the parties may  
21 initiate it, as provided in both the Federal Rules of Civil Procedure and Local Rules, without  
22 additional approval from the Court." (*Id.* at 4.) The Court does not participate in discovery, nor  
23 does it conduct or preside over depositions.

24 Further, Plaintiff's "pro se status does not excuse intentional noncompliance with

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25 <sup>1</sup> Defendants lodged a copy of the February 27, 2025, deposition transcript with the Court on March 20,  
26 2025. (*See* Doc. 65.)

27 <sup>2</sup> The Court also reviewed Plaintiff's deposition testimony of January 10, 2025, taken in *Casey v. Brown*,  
28 No. 1:23-cv-01068-JLT-SAB. A review of that transcript reveals Plaintiff acknowledged his obligation to  
testify truthfully and understood the deposition process, and that he answered counsel's questions  
concerning his claims in that action.

1 discovery rules and court orders.” *Sanchez v. Rodriguez*, 298 F.R.D. 460, 470 (C.D. Cal. 2014);  
2 *see also Lindstedt v. City of Granby*, 238 F.3d 933, 937 (8th Cir. 2000) (lack of a lawyer does not  
3 excuse noncompliance with discovery rules and court orders).

4 The Court will direct that Plaintiff participate in a deposition to occur within a certain time  
5 and will further direct Plaintiff to avoid certain behaviors and known falsehoods as addressed  
6 below. *See, e.g., Rabb v. Figueroa*, No. 1:23-cv-00843-JLT-SAB (PC), 2024 WL 4507636, at \*4-  
7 5 (E.D. Cal. Sept. 27, 2024) (holding that “by filing suit, Plaintiff ‘assumed the responsibility of  
8 proving through admissible evidence the serious allegations of his complaint,’” that “Defendants  
9 have a fundamental right to discovery and to effectively defend themselves,” and compelling  
10 Plaintiff “to sit for a rescheduled and renoticed deposition”); *Bledsoe v. Martinez*, No. 2:18-cv-  
11 2710 JAM KJN P, 2021 WL 463598, at \*6 (E.D. Cal. Feb. 9, 2021) (ordering pro se plaintiff to  
12 attend his deposition, and admonishing plaintiff that “he cannot demand defense counsel produce  
13 documents or witnesses, nonparty or otherwise, at plaintiff’s deposition”); *Scott v. Palmer*, No.  
14 1:09-CV-01329-LJO-SKO (PC), 2014 WL 6685813, at \*3 (E.D. Cal., Nov. 26, 2014)  
15 (admonishing a state prisoner proceeding pro se that use of profanity, abusive conduct, and  
16 uncooperativeness at a deposition is grounds for terminating sanctions and advising him pro se  
17 status does not “shield him from the consequences of abusive behavior”).

18 In sum, Plaintiff will be directed to sit for a second deposition and is expected to  
19 cooperate during the proceeding.

20 **D. Plaintiff Must Respond to Number 3, 5, and 6 of Defendants’ Request**  
**for Production of Documents, Set One**

21 Rule 34 of the Federal Rules of Civil Procedure pertains to the production of documents,  
22 and states that “[a] party may serve on any other party a request within the scope of Rule 26(b)”  
23 to produce certain documents or things. Fed. R. Civ. P. 34(a).

24 Defendants contend Plaintiff failed to respond to their request for production of  
25 documents, numbers 5 and 6, and failed to produce the documents referenced in his response to  
26 request number 3.

27 The Court has reviewed the relevant discovery requests, Plaintiff’s response, and defense  
28 counsel’s declaration. (*See* Doc. 64-1 at 16; Doc. 64-2 at 2-3, ¶ 10; Doc. 64-2 at 5-10 [Ex. A to

Decl. of Chan] & 64-2 at 49 [Ex. D to Decl. of Chan].) Plaintiff will be ordered to provide complete responses to request numbers 5 and 6, and to produce the documents related to his response to request number 3.

**E. Defendants' Request for Sanctions Will Be Denied**

Under Rules 37 of the Federal Rules of Civil Procedure 37(a)(5)(A), if a motion to compel is granted:

the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion ... to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

Fed. R. Civ. P. (a)(5)(A). "Rule 37(d) provides that if a party fails to appear at a duly noticed deposition, the court may order sanctions" but that "courts frequently refuse to impose monetary sanctions on indigent parties." *Hammler v. Lyons*, No. 1:19-cv-01650-AWI-GSA-PC, 2023 WL 395898, at \*10 (E.D. Cal. Jan. 25, 2023) (collecting cases).

The Court declines to award monetary sanctions at this juncture. *See, e.g., Johnson v. Nelson*, No. 2:20-cv-0967 WBS DB P, 2022 WL 118948, at \*2 (granting defendant's motion to compel plaintiff to participate in a deposition but denying the imposition of monetary sanctions). "The Ninth Circuit has stated that where a pro se prisoner attends a deposition, but refuses to testify, he has not failed to appear," and that "the proper remedy is a court order to testify under Rule 37(a)." *Id.* However, Plaintiff is advised that in the event he was to refuse to participate in the second deposition, the Court would entertain a motion for terminating sanctions and may recommend dismissal of this action. *See Simmons v. Pompey*, No. 2:19-cv-02491-JDP (PC), 2021 WL 1315239, at \*2 (E.D. Cal. Apr. 8, 2021) (declining to impose monetary sanctions but warning plaintiff "that if he refuses to sit for his deposition a second time," the court will recommend dismissal of the action).

1 In sum, the Court finds an award of monetary sanctions at this stage would be unjust and  
2 that the appropriate remedy is to require Plaintiff to sit for a second deposition. Fed. R. Civ. P.  
3 (a)(5)(A); *Johnson*, 2022 WL 118948, at \*2.

4 **III. CONCLUSION AND ORDER**

5 Accordingly, for the reasons stated above, the Court **HEREBY ORDERS**:

- 6 1. Defendants' motion to compel and request for sanctions (Doc. 64) is **GRANTED** in  
7 part and **DENIED** in part as follows:
- 8 a. Plaintiff **SHALL** sit for a second deposition **no later than 45 days** from the  
9 date of this order. Defendants shall re-notice Plaintiff's deposition in  
10 accordance with Rule 30 of the Federal Rules of Civil Procedure;
- 11 b. Plaintiff **SHALL** respond to request numbers 5 and 6 and provide the  
12 documentation relevant to his response concerning request number 3, to  
13 Defendant Castro's Requests for Production of Documents, Set One, **within 14**  
14 **days** of the date of this order. Plaintiff's responses should be mailed directly to  
15 defense counsel and should not be sent to the Court;
- 16 c. Defendants' request for monetary sanctions is **DENIED**; and
- 17 2. The Discovery and Scheduling Order is further **MODIFIED** as follows:
- 18 a. The dispositive motion filing deadline is extended from May 21, 2025, to  
19 Monday, **July 21, 2025**.

20 IT IS SO ORDERED.

21 Dated: **April 22, 2025**

22 */s/ Sheila K. Oberto*  
23 UNITED STATES MAGISTRATE JUDGE  
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